

lit.

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

LLOYD STENERSEN,)	
)	
Appellant,)	PCHB No. 91-251
)	
v.)	
)	FINAL FINDINGS OF FACT,
SOUTHWEST WASHINGTON AIR)	CONCLUSIONS OF LAW
POLLUTION CONTROL AUTHORITY,)	AND ORDER
)	
Respondent.)	

This matter, the appeal of Notice and Order of a Civil Penalty for allegedly causing or allowing an outdoor fire containing prohibitive materials, came on for formal hearing before the Pollution Control Hearings Board, Harold S. Zimmerman, Presiding, at the Vancouver City Hall Council Chambers, Vancouver, Washington on February 20, 1992. Board member Judith A. Bendor has had the opportunity to review the record, examine exhibits and consider the appeal.

Appellant Lloyd Stenersen appeared pro se. Respondent Southwest Washington Air Pollution Control Authority was represented by David Jahn, attorney at law. The proceedings were reported by Tamı Kern of Archer and Archer Court Reporters of Longview and Vancouver, WA.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Board makes these

FINDINGS OF FACT

I

Respondent SWAPCA is an activated air pollution control authority under Chapter

1
2 70.94 RCW, the Washington Clean Air Act, with the responsibility for carrying out a program
3 of air pollution prevention and control in a multi-county area, including the site of the incident
4 in question near Brush Prairie, Washington.

5 II

6 On October 28, 1991, William Francis Miller, Battalion Chief of Clark County Fire
7 District 3, issued a burning permit to Jason Stenersen, to burn a dozer pile, location of the fire
8 being 20609 NE 164th Street, Brush Prairie, WA.

9 III

10 Under the permit, the permittee agreed to have a minimum of one responsible person in
11 attendance at the fire while burning; that burning be done during daylight hours only,
12 permittee must not leave fire unattended until extinguished, not to burn if wind is from the
13 East or is blowing more than 10 miles per hour. The fire may contain only vegetation, lumber
14 and other wood products that have not been painted, treated with preservatives or stains, or
15 soaked with oil or grease. The permit also required that fire which contains materials other
16 than those listed, or which creates dense smoke or offensive odors, requires written permission
17 from the local air pollution authority or the Department of Ecology. The permit also
18 specifically required that plastic bags be removed from the burn pile.

19 IV

20 Before any burning occurred, Battalion Chief Miller and Jason Stenersen drove down a
21 slick muddy road, stopping short of the pile about 50 feet, because of the mud and rain.
22 Miller said he was familiar with the area, and recognized the pile, having issued previous
23 permits there. He saw there was some construction material and brush on the pile, and told
24 Jason that only natural vegetation could be burned, and that Jason would have to remove
25 several plastic bags from the pile.

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V

Miller returned to his home, but was called back to the burn pile by Fire Chief Steven Wrightson after supper because of a reported illegal burn. Miller saw black smoke, and then saw the chief and several volunteer firemen had arrived there. He asked Jason Stenersen if he had read the permit, and he responded, yes, and admitted a violation of burning prohibited materials. Miller said he saw fiberglass insulation, formica, roofing material, paint cans, caulking tubes, plastic bags in the debris.

VI

Battalion Chief Miller had observed the burn pile from uphill, and could look directly down on the pile. Because the road looked slippery, he had turned around without actually getting directly to the burn pile. The firemen responded to the fire at approximately 5:26 p.m., an hour and 26 minutes after the permit had been issued. Due to the road conditions, no fire apparatus or trucks were used on the fire, although a floating pump was hand-carried to an on-site pond and pumped water until the fire was extinguished.

VII

Gerald David Strawn, an air quality specialist with SWAPCA, was contacted by Fire Chief Steve Wrightson of Clark County Fire District No. 3 at approximately 5:45 p.m., that day. When he arrived, Mr. Strawn rode with a fire department member some 150 yards down the road to observe the large burn pile which was burning hotly. He observed that the fire consisted of a central brush/stump area with construction debris burning on both sides of the brush pile, one approximately 25 feet by 30 feet, and the other 20 feet by 15 feet.

We find that material burning in the fire consisted of T-1-11 siding, pressboard, strand/wafer board, plywood, dimensional lumber, painted and unpainted, asphalt roofing, styrofoam, pieces of dryer vent hose, linoleum, caulking tubes, plastic tarping, one-

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2 gallon and five-gallon paint cans, paper, cardboard boxes and carpeting.

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8 VIII

9 Strawn issued Field Notice of Violation 9028 to Lloyd Stenersen, Brush Prairie,
10 through his son, Jason, as Lloyd Stenersen was not present at the burn site. The Notice cited
11 SWAPCA's General Regulations Section 400-035, and Chapt. 70.94.775 RCW, and Strawn
12 recommended a penalty of \$5,000, with no more than \$2,500 suspended.

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14 IX

15 On November 1, 1991, a Notice of Violation was sent by certified mail to Mr. Lloyd
16 Stenersen, 20609 NE 164th Street, Brush Prairie, WA, 98606, listing violation of Section 400-
17 035 of general regulations of Southwest Air Pollution Control Authority, specifying these acts:

18
19 Permitting and maintaining an open fire containing material other than natural
20 vegetation in violation of Chapter 70.94.040 and 775 of the Revised Code of
21 Washington, on or about October 28, 1991, at 6:30 p.m. at 10609 NE 164th
22 Street, Brush Prairie, Washington, as stated in Field Notice of Violation number
23 9028.

24 The civil penalty listed on the Notice was \$2,500.

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26 X

27 Mr. Strawn returned to the burning site October 29, 1991, with John Lauderback of the
Clark County Health Department to check a report that material was being buried at the site.
The report was determined to be incorrect. Lloyd Stenersen was present at the site, and
Strawn discussed burning regulations with Mr. Stenersen at that time. Mr. Stenersen said it
was his understanding that it was all right to start the fire with dry lumber, and it was legal to
burn dry lumber. Mr. Strawn advised to the contrary and made an effort to explain. Strawn's
observations and conversations indicated to him that construction materials were added to the
pile after the permit was issued.

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XI

Thomas C. Tabor, acting director and 21-year employee of SWAPCA, said that the previous director, Dick Serdoz, had sent the Notice of Violation and Penalty of \$2,500 to Lloyd Stenersen November 1, 1991, and November 13, 1991 sent Mr. Stenersen a letter notifying him that \$1,000 of the penalty would be suspended, if the \$1,500 balance were paid by December 12, 1991. Tabor said that the director determines the amount of the penalty by the magnitude of the violation, the impact of the fire, by having it exceed the costs of an alternate means of disposal, by the degree of smoke effect on traffic and the airshed, by checking to see if there have been previous contacts or infractions, or if it is an initial violation. Mr. Tabor said it would be hard to determine the alternative disposal costs in this case, but he believes the material would have had to be hauled to a landfill. The \$1,500 penalty was not paid by December 12, 1991.

XII

On November 12, 1991, a letter from Lloyd Stenersen, and a statement of Jason Stenersen, were delivered to SWAPCA, attention to Dick Serdoz. The letter reviewed the excavation and construction of the pond for irrigation at 20609 NE 164th Street, in 1985, and told of stumps and brush left. The letter also explained the work of Roy South, whose letter of November 9, 1991, reviewed their effort to haul materials to the pile, and the work of Jason Stenersen in hauling to the burn pile. The letter said Bill Miller drove approximately 100 feet from one end of the pile when he issued the burn permit to Jason. The letter of Mr. South stressed that his primary job was to separate burnable wood products and other trash and non-combustible building materials, loading the burnables into a trailer for burn pile.

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2 XIII

3 Lloyd E. Stenersen said his 16-year old son had not followed his instructions precisely
4 in the burn pile appeal, but that item 8 on the permit does indicate that lumber can be burned,
5 and he was told only to remove the plastic bags.

6 XIV

7 Two other Notices of Violation and Civil Penalty were issued in Brush Prairie, that
8 Mr. Stenersen compared to his violation. One issued to Square D Cabinets, Brush Prairie, on
9 October 28, 1991, was a fire in a pile size of 15 feet by 20 feet, including scrap dimensional
10 lumber, assorted veneer/plywood from the cabinet shop. It caused a \$500 fine. The second
11 Notice of Violation and Civil Penalty was issued on November 1, 1991, to Simon Roth, 17400
12 NE 88th Street, Vancouver, for \$1,000, with \$750 suspended. Again this was for burning
13 prohibited materials. The burn pile was approximately 35 feet by 40 feet in diameter, and
14 consisted of baling twine, assorted plastics, scrap lumber, pallets, paper feed bags, antibiotic
15 containers, one refrigerator, paper trash and brush. Fire district No. 5 at Sifton extinguished
16 the fire off Ward Road.

17 XV

18 Since March, 1969, all commercial burning has been banned in Clark County. Open
19 burning violations by businesses are treated differently in SWAPCA administration, because
20 they are commercial, make a profit and by disposing of debris, they have more opportunity to
21 know the rules, Acting Director Tabor stated.

22 XVI

23 Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

24 From these Findings of Fact, the Board comes to these
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1
2 CONCLUSIONS OF LAW

3 I

4 The Board has jurisdiction over the issues and the parties. Chapters 43.21B and 70.94
5 RCW.

6 II

7 SWAPCA's general regulations for air pollution sources, under Section 400.035,
8 subsection (2)(a) burning permits may be provided by the local fire department, fire district or
9 Washington Department of Natural Resources; (b) No permit shall be issued unless the Control
10 Officer is satisfied that:

11 (v) No materials containing asphalt, petroleum products, paints, rubber products,
12 plastic or any substance which normally omits dense smoke or obnoxious odors will be
burned.

13 The underlying statutes, cited in the Notice of Violation and Civil Penalty are RCW
14 70.94.040, and 70.94.775, and they essentially restate these terms.

15 III

16 SWAPCA's rules clearly require a permit from an agency's control officer for outdoor
17 burning. In the instant case, the son of the owner obtained a burning permit from a control
18 officer of the fire district. The permit allows the burning of vegetation, lumber and other
19 untreated wood products. However, the fire department permit required the burning be done
20 during daylight hours, and the fire must not be left unattended. Both of these conditions were
21 violated.

22 IV

23 Lloyd Stenersen's letter to former SWAPCA director Dick Serdoz on November 12,
24 1991, admitted the burn pile contained other than scrap lumber. The pile included roofing
25 materials, caulking tubes, and empty paint cans, Stenersen stated. We conclude that

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
PCHB NO. 91-251

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2 SWAPCA's outdoor burning regulations were violated on October 28, 1991. The fire
3 contained prohibited materials.

4 V

5 The Washington Clean Air Act is a strict liability statute and, therefore, a violator's
6 state of mind or intentions are irrelevant to the question of liability.

7 The law authorizes the imposition of a civil penalty for violation of the act or its
8 implementing regulations up to \$10,000 per day for each violation.

9 VI

10 Former Director Serdoz placed a \$2,500 penalty, and later offered to suspend \$1,000,
11 if it were paid by December 12, 1991. The offer was not accepted by Mr. Stenersen, nor was
12 the fine paid. We do not know the reasons for Mr. Serdoz' offer or of Mr. Stenersen's not
13 accepting it.

14 VII

15 The purpose of a civil penalty is not primarily retribution, but rather to influence
16 behavior, both of the alleged violators and the public at large. In this case, the appellant had
17 obtained a burning permit from a responsible fire district official before the burning took
18 place. Civil penalties in two comparable cases within the same part of Clark County in the
19 same week were \$1,000 with \$750 suspended, and another was for \$500.

20 Considering the lack of prior air pollution violations, and the apparent authorization of
21 the fire department to burn after an on-site inspection, we conclude some mitigation is
22 appropriate.

23 VIII

24 Any Finding of Fact which is deemed a Conclusion of Law, is hereby adopted as such.

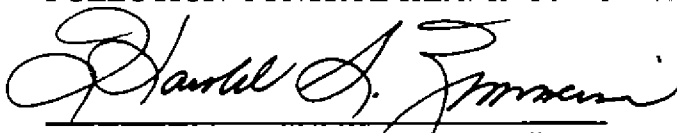
25 From these Conclusions of Law, the Board enters this

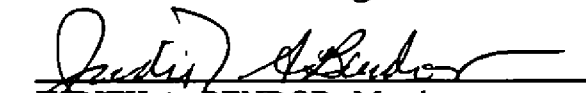
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2 ORDER

3 Notice and Order of Civil Penalty to appellant Stenersen is AFFIRMED, except that
4 \$800 of the penalty is suspended on the condition that appellant does not violate SWAPCA's
5 rules for two years from the date of this decision.

6 DONE this 25th day of March, 1992.

7
8 POLLUTION CONTROL HEARINGS BOARD

9 
10 HAROLD S. ZIMMERMAN, Presiding

11 
12 JUDITH A. BENDOR, Member
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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB NO. 91-251